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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,855	10/29/2003	Gary Click	PS5035P40-D	9772
22862	7590	08/16/2005	EXAMINER	
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	
DATE MAILED: 08/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,855

Applicant(s)

CLICK ET AL.

Examiner

Mark T. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the amendments filed on May 10, 2005.

Applicant's amendments and remarks have been carefully considered.

2. In claim 1, line 2, "railroad switch" should be changed to -- A railroad switch --.

3. Claims 1-6, 8/5 and 8/6 are rejected under 35 U.S.C. 102(b) as being anticipated by Strong (US 2,041,382).

Strong discloses a railroad switch having structure 26 that is readable as a lost motion basket housing having all the features as recited in the instant claims, including a through opening in the housing, e.g. as shown in Figure 6, for receiving bar or rod 17; internally of structure 26, as shown in Figures 2, 3 and 6, there are means for securing and limiting lateral displacement of rod 17; a bore in head portion 38 for receiving pivot pin 39; and torsion arm 20 pivotally mounted on pivot pin 39.

Regarding the instant claimed points on the housing for use as attachment points, as recited in instant claim 8, note that any points on structure 26 of Strong are inherently capable of being used as attachment points; therefore, the instant claimed limitation is considered met.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 7, 8/7, and 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strong (US 2,041,382) in view of Strom (US 956,834)

Strong is applied above. It is noted that Strong does not clearly show the structural detail of his switch stand; therefore, one skilled in the art would have the motivation to look elsewhere for a more detailed teaching of a switch stand.

Strom shows a better structural detail of a switch stand, including torsion arm 14 rigidly secured to operating shaft or rod 13, which is turned by the gear means inside the switch stand housing.

In view of Strom, it would have been obvious to one skilled in the art to construct a switch stand for use in the structure of Strong, in a manner similar to that taught by Strom, because Strom provides a more detailed teaching of a switch stand.

Regarding the instant claimed torsion arm being rigidly secured to the rod, as recited in instant claim 9, note that torsion arm 14 of Strom are rigidly secured to rod 13, which is readable as an assist rod.

Regarding the instant claimed slot on the torsion arm being an elongated slot, as recited in instant claim 7, note that the free end of torsion arm 14 of Strom is thickened; therefore, the slot in the thickened area of the free arm, as shown in Figure 2 of Strom, is readable as an elongated slot, as broadly recited in the instant claim.

6. Responses to Applicant's Arguments:

Applicant's arguments are generally deemed moot in view of the new grounds of rejection above. Since the instant claims have been amended to limit to a railroad switch, the structure of Sheesley is no longer applicable as indicated in the previous interview.

As to Applicant's criticizing the examiner for not conducting a proper search, and thereby causing delay and additional expenses for Applicant, it should be noted that the examiner's search approach was properly made, and the claims were properly treated, in accordance with limitations of the claims as presented by Applicant's representative for examination. Accordingly, the effectiveness of Applicant's representative certainly would have significant impacts on the efficiency of prosecution.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should further consider the structure of Robertson; wherein, torsion arm 24 is provided with an elongated slot for converting movements between oscillation and reciprocation.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (2:00-8:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
8/11/05